

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

MDL NO. 1456

THIS DOCUMENT RELATES TO:
BMS SETTLEMENT

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

**CLASS COUNSEL'S PROPOSAL TO REBALANCE THE
BMS SETTLEMENT ALLOCATION**

I. INTRODUCTION

At the BMS settlement final fairness hearing held March 28, 2011, the Court asked Class Counsel to submit a possible "rebalancing" scenario that provides Class 1 members who were administered the BMS "Heartland Drugs" with double or treble their actual damages plus a modest recovery for other BMS Subject Drugs. The Court also implored the parties to reach an accommodation that resolves the Aaronson objection. We worked very hard to do so, with the very diligent mediation assistance of Professor Eric Green. Don Haviland and his client, TPP Allocation Counsel Richard Cohen and Consumer Allocation Counsel Wells Wilkinson and Jeffrey Goldenberg were included in the process.

TPP Allocation Counsel has agreed to increase the \$4,370,000 allocation to Class 1 and Class 3 Consumers by \$1,000,000 to a total of \$5,370,000. As detailed below, Class Counsel propose to use the additional money to "rebalance" the distribution to Class 1 consumers in a manner that provides single actual damages for "non-Heartland Drugs," double actual damages for the "Heartland Drugs" and a modest \$50 recovery for so-called "no damage" drugs. We

5/5/2011
I give my preliminary approval
to the proposed Patti B. Saris